



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0092]

RIN 1625-AA00

Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone on the navigable waters of Port Valdez, Valdez, Alaska, in the vicinity of the Valdez Spit. The proposed safety zone is necessary to protect persons and vessels from the hazards associated with the annual City of Valdez July 4th Fireworks Display event. This rule is intended to restrict vessels from a portion of the navigable waters of Port Valdez, in the immediate vicinity of the fireworks launch platforms, before, during, and immediately after the fireworks event. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0092 using the Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Walner W. Alvarez, Chief of Waterways Management Division, U.S. Coast Guard Marine Safety Unit Valdez; telephone (907) 835-7223, e-mail Walner.W.Alvarez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard began issuing temporary final rules in 2011 to establish a safety zone during the Valdez July 4th Fireworks Display. The Coast Guard received no comments or concerns from the public when the temporary safety zones were in place. This Notice of Proposed Rulemaking proposes to permanently establish a safety zone of the exact same size and position as that which were established under the temporary final rules since 2014. The legal basis for the rule is the Coast Guard’s authority to establish limited access areas: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05- 1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to enhance the safety for spectators and mariners attending a community event that involves a relatively large fireworks display. The Coast Guard

anticipates that a large number of spectators will congregate around the launch position during the display. The Captain of the Port Prince William Sound has determined that the fireworks launched near a gathering of watercrafts may pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and vessels operating in close proximity to each other. The safety zone is necessary to provide for the safety of persons and vessels attending the event in the navigable waters in the vicinity of the fireworks launch site.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent safety zone on the navigable waters of Port Valdez, within a 200 yard radius of the location where the fireworks will be launched on the Valdez Spit for the City of Valdez July 4th Fireworks Display. The proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. The fireworks displays are expected to occur between 10:00 p.m. and 11:00 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from 9:30 p.m. to 11:30 p.m. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Prince William Sound or the designated representative. Vessels will be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission of the COTP or the designated representative. Before activating the zone the Prince William Sound COTP will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

This rule is being proposed to provide for the safety of life on the navigable waters during the fireworks display event, and to give the public the opportunity to comment on the proposed safety zone location, size, and length of time the zone will be activated.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The Coast Guard’s enforcement of the proposed safety zone will be of short duration, approximately two hours. Furthermore, vessels may be authorized to transit through the proposed safety zones with the permission of the Captain of the Port Prince William Sound, Alaska. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a permanent safety zone on the navigable waters of Port Valdez, in the vicinity of the Valdez Spit. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this

rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for e-mail alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, marine safety, navigation (water), reporting and recordkeeping requirements, security measures, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05- 1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1713 to read as follows:

§ 165.1713 Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK.

(a) **Regulated Area.** The following area is a permanent safety zone: All navigable waters of Port Valdez within a 200-yard radius from a position of 61 °07'38"N and 146 °21'17"W. This includes the entrance to the Valdez small boat harbor.

(b) **Effective date.** This rule will be effective from 9:30 p.m. until 11:30 p.m. on July 4th of each year, or during the same time frame on specified rain dates of July 5th through July 8th of each year.

(c) **Definitions.** The following definitions apply to this section:

(1) The term “designated representative” means any Coast Guard commissioned, warrant or petty officer of the U. S. Coast Guard who has been designated by the Captain of the Port (COTP), Prince William Sound, to act on his or her behalf.

(2) The term “official patrol vessel” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Prince William Sound.

(d) **Regulations.**

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the designated representative during periods of enforcement.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel or other official patrol vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area may request permission from the COTP via VHF Channel 16 or (907) 835-7205 (Prince William Sound Vessel Traffic Center) to request permission to do so.

(5) The Coast Guard will issue a broadcast notice to mariners to advise mariners of the safety zone before and during the event.

(6) The COTP may be aided by other Federal, state, borough and local law enforcement officials in the enforcement of this regulation.

Dated: February 21, 2017

J. T. LALLY,

Commander, U.S. Coast Guard,

Captain of the Port Prince William Sound, Alaska